CRMMO No.55 of 2007.

6.7.2007 Present: Mr.Anup Rattan, counsel for the petitioners.
Mr.J.S.Guleria, Law Officer for respondent No.2.

This petition is directed against the order dated 1.5.2007 passed by the learned Additional Sessions Judge, Solan in Criminal Revision No.25-S/10 of 2006.

A complaint under Section 138 of the Negotiable Instruments Act was filed against the present petitioner by respondent No.1. The evidence of the complainant was closed on 10.5.2005. Thereafter, the statement of the present petitioner was recorded under Section 313 Cr.P.C. On 5.11.2005 the present petitioner wanted to lead defence evidence and cited the proprietor herself and one other witness, i.e. the concerned official from the office of the Income Tax Department, Parwanoo as witnesses. The application moved by the petitioner for leading defence was allowed. The matter was listed on 4.4.2006 for the evidence of the petitioner but no witnesses were present and at the request of the petitioner the case was adjourned to 4.5.2006. On 4.5.2006 both the witnesses were present in Court but counsel for the present petitioner closed the evidence and stated that he does not want to lead any defence evidence. On the said date counsel of the complainant as well as the present petitioner also made a request that the matter be taken by by the Lok Adalat as there

is a possibility of compromise. Thereafter, the petitioner filed another application under Section 311 Cr.P.C. seeking to examine the witnesses which it had failed to examine earlier. This application was rejected and the Revision filed by the petitioner has also been rejected. Hence, the present petition under Article 227 of the Constitution of India.

Mr.Anup Rattan has strenuously contended that on 4.5.2006 the counsel for the petitioner had closed the evidence only because of the reason that there were some chances of compromise and the petitioner was quite sure that compromise would be effected and therefore evidence was not required. Even assuming for the sake of arguments that this was the impression of the petitioner, once the petitioner itself closed its evidence it cannot be permitted to re-open the matter for examining the same witnesses. The petitioner could have requested the Court that the matter may be adjourned for compromise but should not have closed the evidence. Once the petitioner closed the evidence it cannot say that evidence was closed under exceptional circumstances.

I find no jurisdictional error in the order passed by the Court below. Hence, the present petition is rejected.

In view of the dismissal of the main petition Cr.M.P. No.291 of 2007 is also rejected.

July 6, 2007. **(Deepak Gupta),**
PV **Acting Chief Justice.**